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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,946	10/23/2001	Mark Allen Smerznak	8313	4730

27752 7590 10/24/2003

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EXAMINER

WEBB, GREGORY E

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/24/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,946

Applicant(s)

SMERZNAK ET AL.

Examiner

Gregory E. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 17,30-39 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16,18-29,40-43 and 45-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The following is in response to the applicant's amendments and arguments submitted 8-18-03. The examiner appreciates the applicant's response and agrees that previous election of species was convoluted. As such, the examiner withdraws previous election of species.
2. The examiner however maintains previous restriction requirements. The applicant argues that the groups are coextensive and would not require additional burden on the examiner. To this remark, the examiner strongly disagrees. Group 1 is drawn specifically to a composition comprising at least three ingredients. Group 2 is drawn to a method of treating fabrics using at least these three ingredients and involves at least the step of contacting the fabric. The applicant's step of contacting the surface is only one of many ways to treat fabric. The applicant's claim allows for later inclusion of additional steps not required by the composition. For example textile treatment can involve the following steps beyond contacting the fabric: mechanically agitating the textile, rinsing the textile, drying the textile, folding the textile, softening the textile, and de-pilling the textile. As textile treatment can involve a large number of variations beyond those required by the composition alone, such methods steps are found to be patentably distinct from the composition alone.
3. Concerning the distinction between group I and group III, the applicant's composition in group III is wholly different from those of group I. In fact, none of the compounds required by group I are required by group III. As such these two groups are considered to be distinct.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-16, 18-29, 40-42, 45-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Glenn Jr. et al

6. Glenn teaches compositions containing 0.5-10% of a crystalline hydroxy containing stabilizer, 1-30% of a moisturizing agent (i.e. a fabric substantive agent), 5-30% of a surfactant (as per claim 16 for example), and water (see abstract).

7. Concerning the fabric substantive agent, Glenn teaches cationic compounds (see col. 6, lines 51-64), imines (see col. 7, lines 10-28), polyglycols, fatty esters and waxy ester (see col. 10), derivatives of castor oil (see col. 5), silicone containing compound (see col. 10), and alkaline agents including triethanolamine (see col. 8, lines 8-9).

8. Concerning the salt of claim 24, Glenn teaches various salts including tetrasodium EDTA (see example 5). Glenn further teaches various additives including perfumes and aesthetic agents (see single vessel process description col. 14 and col. 8, lines 22-41).

9. Concerning the deterative enzymes,

10. It should be noted that although Glenn's composition are intended for a different purpose than the instant invention, the applicant's broadly defined functional language clearly encompasses the specific chemical compounds taught by Glenn.

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11. It should also be noted that the results of adding these specific compounds taught by Glenn would inherently meet the expected results found in the method claims 45 and 46 as the compounds are identical and added in the equivalent proportion to those found in the instant claims.

12. Claim 47 is rejected under 35 U.S.C. 102(e) as being anticipated by Esser et al (US 6,241,976).

13. Esser teaches structurants such as material b) in claim 47 (see cols. 9-10). Esser teaches these composition to be aqueous (see abstract). Esser teaches various additives falling within the applicant's function descriptions (see col. 20).

14. Claims 1-16, 18-29, 40-43, and 45-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Beerse et al (US 6,183,757)

15. Beerse teaches liquid laundry compositions containing enzymes, surfactants, glycol, alkaline triethanolamine, quaternary compounds, nitrogen containing compounds, polyethylene glycol moieties, perfumes, and water (see liquid laundry example in col. 33).

16. Beerse teaches various stabilizers including the applicant's crystalline stabilizer (see col. 19).


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory E. Webb whose telephone number is 703-305-4945. The examiner can normally be reached on 9:00-17:30 (m-f).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink, appearing to read 'Gregory E. Webb', with a large, stylized initial 'G'.

Gregory E. Webb
Primary Examiner
Art Unit 1751

gw